Fremont Manufacturing Division, The Oil Gear Company, Inc. and Local Lodge No. 31, International Association of Machinists and Aerospace Workers, AFL-CIO, Petitioner and United Steelworkers of America, AFL-CIO-CLC, Petitioner. Cases 17-RC-9112 and 17-RC-9122

April 9, 1981

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board has considered objections to an election held November 6, 1980, and the Hearing Officer's report and addendum thereto recommending disposition of same. The Employer filed exceptions and a supporting brief and Local Lodge No. 31, International Association of Machinists and Aerospace Workers, AFL-CIO (hereinafter referred to as IAM) filed a brief opposing the exceptions. The Board has reviewed the record inlight of the exceptions and briefs and hereby adopts the Hearing Officer's findings and recommendations, but for reasons in addition to those relied upon by the Hearing Officer.

IAM requests that the Board dismiss the Employer's exceptions, contending that they were not timely filed with the Board. The Hearing Officer's Report on Objections with findings and recommendations, dated December 11, 1980, states, in accordance with Section 102.69(f) of the Board's and Regulations, Series 8, as amended, that, "any party may, within ten (10) days from the issuance of this Report, file with the Board in Washington. Exceptions to any portion of this Report with Supporting Brief, if desired." Section 102.114(a) of the Board's Rules and Regulations, Series 8, as amended, notes that, "[w]henever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or other paper upon him, and the notice or paper is served on him by mail or by telegram, 3 days shall be added to the prescribed period " Thus, under the Board's rules, the last day on which timely exceptions could have been filed with the Board was December 24, 1980. However, the Employer's exceptions were mailed on December 23. 1980, and filed on December 30, 1980. The Employer's action did not result in the timely filing of its exceptions, nor could it reasonably have been expected to do so, and we are constrained to reject them. See Southeastern Mills, Inc., 227 NLRB 57, fn. 1 (1976). See also Sig Wold Storage & Transfer, Inc., 205 NLRB 378 (1973), and Hughes Tool Company d/b/a KLAS-TV, 197 NLRB 1160 (1972).

Accordingly, in the absence of timely exceptions, we hereby adopt the Hearing Officer's findings and recommendations.²

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Local Lodge No. 31, International Association of Machinists and Aerospace workers, AFL-CIO, and that, pursuant to Section 9(a) of the Act, the foregoing labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

All full-time and regular part-time production and maintenance employees including line leaders employed at its facility located at 700 South Downing Street, Fremont, Nebraska but excluding the receiving department employees, office clerical employees, industrial engineering employees, professional employees, guards and supervisors as defined in the Act.

¹ The election was conducted pursuant to a Decision and Direction of Election dated October 10, 1980. The tally was: 29 for Local Lodge No. 31, International Association of Machinists and Aerospace Workers, AFL-CIO, 0 for United Steelworkers of America, AFL-CIO-CLC, and 13 against the participating labor organizations. There were no challenged or void ballots.

² Moreover, even considering the merits of the Employer's exceptions, we find no cause to change the results herein.

The Employer excepted to the Hearing Officer's refusal to allow the Employer to present evidence concerning the supervisory status of line leaders employed by the Employer, noting that the Regional Director for Region 17 included this objection in his Order Directing Hearing on Objections dated November 21, 1980. We find no merit in this exception. The Regional Director's Decision and Direction of Election on October 10, 1980 specifically found that line leaders should be included in the appropriate unit. The Employer filed a request for review of this finding with the Board, which was denied by the Board on November 5, 1980. The Employer did not contend in its objections to the election that the status of line leaders had changed since the original unit determination, or that the determination of their status was based on an inadequate record. Cf. Delchamps, Inc., 210 NLRB 179 (1974). Thus, it appears that the Employer is attempting to relitigate an issue which the Board has previously and conclusively decided. Therefore, we find that the Hearing Officer was correct in refusing the Employer's proffer of evidence.

The Employer also excepted to the Hearing Officer's recommendation to overrule its objection to the refusal of the Board agent who conducted the election to honor the Employer's challenge to the ballot of line leader Roy Rogers. Additionally, the Employer excepted to the Hearing Officer's finding that certain conduct of Rogers did not interfere with the election. The Employer's claims are based on its contention that Rogers is a supervisor. As noted herein, the Board decided the supervisory status of line leaders in its denial of the Employer's request for review of the unit determination. Accordingly, we find no merit to these exceptions. See Amulgamated Clothing Workers of America. AFL-CIO. CLC, 217 NLRB 98 (1975). NLRB Field Manual Sec. 11338.51 (1971).